

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR PRODUCTS AND RELATED SERVICES**  
**Southwestern Bell Telephone L.P. dba AT&T Datacomm**

**1. Introduction**

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Southwestern Bell Telephone L.P. dba AT&T Datacomm (hereinafter "Vendor"), with its principal place of business at 712 East Huntland Drive, Room 313, Austin, TX 78752.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Texas Building and Procurement Commission's Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-064, on July 21, 2005, for Data Networking/Telephone System Equipment & Services. DIR acknowledges the fact Southwestern Bell Telephone dba SBC Datacomm has merged with AT&T Corporation and the name of the Vendor has changed to Southwestern Bell Telephone L.P. dba AT&T Datacomm. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-064 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Product and Pricing Index; Appendix D, Software License/Service Agreements Terms and Conditions; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-064, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-064, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to two (2) optional one-year terms.

**3. Product and Service Offerings**

**A. Products**

Products available under this Contract are limited to brands identified in Appendix C Product and Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above.

**B. Services**

Services available under this Contract are limited to those services identified in Appendix C Product and Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

**4. Pricing**

**A. Manufacturer's Suggested Retail Price (MSRP)**

MSRP is defined as the product sales price suggested by the manufacturer of a product.

**B. Customer Discount**

The minimum Customer discount for all products and services will be the percentages off MSRP as specified in Appendix C Products and Pricing Index.

**C. Customer Price**

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request. Vendor agrees it shall offer and make available this DIR Contract as first choice for all sales of Products and Services identified in Section 3. above to eligible Texas DIR Customers during its term.

3) If pricing for products or services available under this Contract are provided at a lower price, based on a quantity of one, to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible

Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This Contract shall be amended within ten (10) business days to reflect the lower price.

**D. DIR Administrative Fee**

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**E. Shipping and Handling Fees**

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

**F. Tax-Exempt**

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

**G. Travel Expense Reimbursement**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized by the current State Travel Regulations. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

**H. Changes to Prices**

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

**5. DIR Administrative Fee**

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.

**B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Sherri Parks, Service Delivery Division  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Facsimile: (512) 475-4759  
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:

Marcus Montemayor  
AT&T Datacomm  
712 East Huntland Drive, Room 313  
Austin, TX 78752  
Phone: (512) 421-5160  
Facsimile: (512) 870-4388  
Email: marcus.montemayor@att.com

**7. Software License and Service Agreements**

**A. Software License Agreement**

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreements set forth in Appendix D of this Contract. No changes to the Software License Agreements terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D. Order Fulfiller shall make the Software License Agreements terms and conditions available to all Customers at all times.

2) Compliance with the Software License Agreements is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License Agreements. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software License Agreements terms and conditions.

**B. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor.

**C. Service Agreement**

Services provided under this Contract shall be in accordance with the Service Agreements as set forth in Appendix D of this Contract. No changes to the Service Agreements terms and conditions may be made unless previously agreed to by Vendor and DIR.

**8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.**

**A. Appendix A, Section 6. Contract Fulfillment and Promotion, Subsection C. Product Warranty and Return Policies is hereby amended to read as follows:**

**C. Product Warranty and Return Policies**

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products. The Vendor's standard limited warranty is thirty (30) days after delivery (or installation, if installation was included), and warrants that the Vendor has good title on the Equipment, free of any claims, liens, encumbrances or security interest of any other part, that the Equipment conforms to the manufacturer's published specifications, and is free from electrical or mechanical defects in materials and workmanship under normal installation, use and service.

**B. Appendix A, Section 9. Vendor Responsibilities, Subsection A.1. Acts or Omissions is amended to read as follows;**

**1) Acts or Omissions**

Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities for personal injury, death and/or damage to tangible property, including attorneys fees, to the extent arising out of, or resulting from any negligent acts or willful misconduct of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as requested by DIR.

**C. Appendix A, Section 10. Contract Enforcement, Subsection C. Force Majeure is amended to read as follows:**

**C. Force Majeure**

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, fire, explosion, vandalism, terrorism, cable cut, storm, or other similar occurrence, any law, order, regulation, direction, action, or request by any government, civil, or military authority, national emergencies, insurrections, riots, strike, labor difficulties, war, civil disturbance, supplier failures, shortages, breaches, or delays, or preemption of existing Service to restore Service in compliance with the regulatory rules and regulations,

epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiler will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

This Contract is executed to be effective as of the date of last signature.

**Southwestern Bell Telephone L.P. dba  
AT&T Datacomm**

**The State of Texas, acting by and through the  
Department of Information Resources**

**Authorized By: Signature on File**

**Authorized By: Signature on File**

**Name: J. N. Shelgren**

**Name: Brian S. Rawson**

**Title: Regional Vice President - Sales**

**Title: Director of Service Delivery**

**Date: 6-06-06**

**Date: 6/19/06**

**Legal: Signature on File**